IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 668 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

HONOURABLE MS.JUSTICE H.N.DEVANI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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BABASAHEB KACHRU DHANE/GADGE - Appellant(s)
Versus
STATE OF GUJARAT & 1 - Opponent(s)

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Appearance :
MR ZUBIN F BHARDA for Appellant(s) : 1,
MR RM CHAUHAN, LD.APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 13/03/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE C.K.BUCH)

1. Heard Mr.Zubin Bharda, learned counsel appearing

for the appellant-orig.accused and Mr.R.M. Chauhan, ld.APP, appearing on behalf of the respondent-State.

2. The present appeal is against the judgment and order of conviction and sentence dated 28th June, 2000, passed by the learned 2nd Extra Assistant Sessions Judge, Valsad at Navsari in Sessions Case No.107 of 1995. By way of the impugned judgment and order, the learned trial Judge has held the appellant guilty for the offence punishable under Sections 307 and 504 of the Indian Penal Code and he has been imposed 8 (eight) years rigorous imprisonment and a fine of Rs.6,000/- for the offence punishable under Section 307 of the Indian Penal Code. The appellant has been imposed sentence of one year rigorous imprisonment and a fine of Rs.1,000/- for the offence punishable under Section 504 of the Indian Penal Code. The judgment and order of conviction and sentence is challenged on various grounds mentioned in paragraph nos.2(a) to 2(n)

of the memo of the appeal. Mr.Bharda has taken us through the case placed by the prosecution and the evidence led in support thereof. According to Mr.Bharda, the appellant has been wrongly held responsible for the offence punishable under Section 307 of the Indian Penal Code. Firstly, he has argued that the appellant ought to have been acquitted from the charges levelled against him because there is no independent evidence except the injured Police Inspector and one Traffic Police Constable, who has allegedly overpowered the appellant while the appellant was attempting to give second knife blow to the complainant-Police Inspector. It is alternatively argued that if the Court feels that the prosecution has satisfactorily proved the incident and the offending act of the appellant, then the case would not fall under Section 307 of the Indian Penal Code but the appellant could have been held responsible for the offence punishable under Section 326 of the Indian Penal Code. This is a case of single blow

and, therefore, the story placed by the prosecution that the appellant had attempted to give second blow but before he could actually inflict the injury, he was overpowered, should not be accepted. Mr.Bharda has also taken us through the injury certificate issued by Dr.Ushaben at Exh.10 and her deposition at Exh.9.

3. Mr.R.M. Chauhan, ld.APP, appearing on behalf of the respondent-State, has also argued that the finding recorded by the learned trial Judge is absolutely in accordance with law and based on sound facts available on record. The injured though is a Police Inspector, was assaulted as an individual and there was no reason for the appellant to inflict a knife blow and that too on the vital part of the body. Actually the vital part of the body namely Chest, was aimed at but because of some diligent act on the part of the injured Police Inspector, he was able to save himself from the blow and the blow fell on

the nearest shoulder. The size of the injury noticed by the doctor should be considered relevant and it is in evidence that one vein was found cut and, therefore, the injured was operated after giving him anaesthesia and there is no reason to disbelieve the Traffic Police Constable who had intervened and saved the complainant Police Inspector from further fatal injury which might have been caused by the appellant. The presence of this independent witness i.e. Police Constable namely Anilbhai, is not seriously assailed by the otherside; on the contrary, the evidence in respect of presence of this witness, namely Anilbhai, has remained unchallenged.

4. To appreciate the rival contentions, firstly we would like to place the facts of the case placed by the prosecution against the appellant-orig.accused. It was the case of the prosecution that on 24th April, 1995, the complainant namely Trikamlal Ranchhodlal Parmar was waiting on the

platform of Navsari Railway Station from where he was to board train viz.Firozpur Janta leading to Bombay, but since the train was late, the complainant decided to go to Surat from Navsari and board another train namely Shatabdi Express as he was in hurry to reach Bombay. The complainant, therefore, had to get his ticket cancelled and purchase a new ticket to go to Surat and therefore, the complainant proceeded towards the ticket window and for that the complainant when was climbing the stairs of the railway bridge, at that point of time the complainant saw that the appellant-orig.accused was beating a lady and that the complainant requested the appellant to refrain from beating her but the appellant got excited and started abusing. The complainant at that point of time informed the appellant that he was a Police Inspector and asked the appellant to leave the lady alone. At that point of time, the appellant ran away from the site and when the complainant came down the stairs, the appellant came with a

knife and rushed towards the complainant and tried to give a knife blow on the chest of the complainant but the complainant dodged the same and in that process got hurt himself on the right shoulder. The appellant tried to give another blow to the complainant but at that point of time one Police Constable namely Mr.Anilbhai, who was on duty on the Traffic Point, came and rushed there and overpowered the appellant and from there the complainant was taken to the Civil Hospital for treatment. It is further the case of the prosecution that the injured gave the history to the doctor when he was taken to the hospital for treatment and a complaint, immediately in couple of hours, came to be registered by police and on the said complaint, the officer in-charge of Navsari Town Police Station registered the crime being C.R.No. I-44 of 1995 against the appellant-orig.accused. The appellant was overpowered and arrested from the spot and the knife in question was also recovered and seized. So prior to the

date of incident probably the appellant-orig.accused and the complainant-injured were not knowing each other and the complainant-injured was not assaulted immediately when the complainant intervened into the quarrel which had taken place between a lady and the appellant on the railway bridge on the Navsari Railway Station. The say of the prosecution is when the complainant-Police Inspector, after the event that had occurred on railway bridge, was going downstairs to return his railway journey ticket so that he can purchase new one and board Shatabdi Express train for Surat after travelling by altogether a different train, he was assaulted. The intention of the appellant can be gathered from the said assault. The bodily injury found is grave in nature. The appellant can be said to have committed offence punishable under Section 307 of the Indian Penal Code only. The doctor-Ushaben has clearly denied the suggestion made during the cross-examination that the injury found on the person injured

cannot result into death or was not capable of causing death.

5. When the appellant was arrested from the spot, the muddamal knife has been recovered immediately, the presence of accused at the spot of incident, etc. are the aspects which have been established satisfactorily. There was no reason for the learned trial Judge to disbelieve the version of the complainant-injured Police Inspector; on the contrary, though he was on leave, he rushed to save the lady who was either manhandled or beaten by the appellant. It is not in evidence that the said lady, who was saved by the complainant, was the wife of the appellant-orig.accused. The conduct of the complainant-injured Police Inspector is found absolutely normal. In the same way, the steps taken by the Police Constable Mr.Anilbhai, who was very well present near the Railway Station on duty, are also found natural and, therefore, according to us, the learned trial Judge has rightly

appreciated the oral evidence of the Police Constable Mr.Anilbhai.

6. To bring home the charge of offence punishable under Section 307 of the Indian Penal Code, the prosecution is supposed to establish the following essential ingredients :

(i) that the death of a human being was attempted;

(ii) that such death was attempted to be caused by, or in consequence of the act of the accused; and

(iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as : (a) the accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death, or that the accused

attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.

7. According to us, the above ingredients have been satisfactorily established by the prosecution through the evidence led by the complainant-Police Inspector and Police Constable Mr.Anilbhai. The evidence led by these two witnesses satisfactorily corroborates with the opinion expressed by the doctor-Ushaben. The papers of investigation also corroborates the certificate at Exh.10. The complainant-Police Inspector had left the hospital after the medical advice so that he can get medical treatment. Thereafter, he was operated. Looking

to the injury, it was suggested by the doctor-Ushaben that such a long and piercing wound cannot be cured without any operative treatment. In the same way, the appellant has been rightly held guilty for the offence punishable under the provisions of the Indian Penal Code.

8. According to us, there is no merit in the appeal so far as the conviction recorded by the learned trial Judge is concerned.

9. Mr.Bharda, learned counsel appearing for the appellant-orig.accused, has alternatively submitted that if it is not possible for this Court to accept the present appeal against the judgment and order of conviction and sentence, then at least this Court should reduce the substantive punishment imposed by the learned trial Judge because the quantum of punishment imposed can be said to be too harsh and in such or similar cases, the Court should impose punishment of three to four years or maximum

five years. It is argued that the quarrel of the appellant with the said lady was absolutely a personal matter and intervention of the third person in between might have provoked the appellant, which may not have any effect which can be said to be relevant in respect of the case placed against the appellant. But while considering the quantum of punishment, the Court should consider the totality of the event. There was no inimical term, so scope of pre-meditation was not there in the case of appellant. It appears that when the appellant saw a person who had intervened and hackled him on the railway bridge, under the heat of excitement he assaulted him with a knife. The case of the prosecution is that the appellant after leaving the place had fetched knife but no cogent evidence is produced by the prosecution by examining any independent witness that from where the appellant got or purchased the said knife. Ultimately, the injury found on the body of the person injured is one and the same is not

on the vital organ. Of course, the case of the prosecution is that the appellant had selected chest, a vital part of the body, for giving blow of knife but the complainant-Police Inspector had saved himself from that attempt. It was possible for the complainant-Police Inspector to overpower the appellant after the infliction of first blow. When the complainant was taken to the hospital, he was neither critical nor serious. So the case obviously falls in the second part of the offence punishable under Section 307 of the Indian Penal Code. This Court can modify the quantum of punishment to some extent looking to the socio-economic background of the appellant. Ultimately, he was a young man when he committed the offending act. The appellant was a hawker and selling petty articles like peanuts, etc. The jail record, of course, goes against him as he has remained absconding for 19 months but according to Mr.Bharda, this behaviour, as per the instructions received by him, was under ill-

advice. Ultimately, the appellant was not arrested by the police; and this Court should take note of one fact that the appellant had voluntarily surrendered himself before the Jail Authority. It is rightly argued by Mr.Bharda that when the Court is requested to exercise discretion by modifying the quantum of punishment, the jail conduct should not be considered as an important aspect because any wrong committed by prisoner is liable for other penalties under the Prisoners' Act and the Jail Manual maintained for the prisoners. So the appropriate decision for such act obviously shall be taken by the Jail Authority. This Court, according to Mr.Bharda, should think whether the quantum of punishment imposed by the learned trial Judge can be said to be on the higher side or not and any appropriate reduction should be made or not. Considering the sequence of events that had taken place on the date of incident and the decisions cited before us by Mr.Bharda, while praying for modification in the

punishment, without referring to the cited decisions, we are of the view that if the substantive sentence is reduced to five years instead of eight years, it would serve the purpose. Ultimately, the order of sentence should carry appropriate message to the Society with some element of deterrence. It is also stated that the complainant-injured Police Inspector was not on duty but he being a man of police force had rushed to the rescue of a lady, who was being manhandled by the appellant. So for the purpose of imposing punishment, the status of the complainant of a police personnel should not be considered so relevant. Any law abiding citizen could have intervened in the quarrel to save a lady from physical/mental torture but it will not be possible for us to accept the argument of Mr.Bharda to say that the appellant should be released forthwith and treat the punishment already undergone by the appellant as sufficient. The observations made by the Apex Court in the case of ***Mohd. Akhtar***

Hussain alias Ibrahim Ahmed Bhatti vs. Assistant Collector of Customs (Prevention) Ahmedabad, reported in AIR 1988 SC 2143, that in certain cases, the Court cannot afford to be blind to the imprisonment which the accused has already undergone. However, this case falls in the category of cases where we do not find that the sentence already undergone can be said to be sufficient. Any Court could have imposed minimum five years' rigorous imprisonment in such a situation and, therefore, we hereby modify the substantive sentence and reduce the same from eight years to five years, maintaining the order of trial Court in respect of amount of fine and the punishment prescribed by the learned trial Judge in the event of default in paying the amount of fine.

10. In view of above observations, the present appeal is hereby partly allowed. The judgment and order of conviction under challenge is hereby upheld and confirmed. However, the

substantive sentence imposed by the learned trial Judge is hereby ordered to be altered and reduced to 5 (five) years. The sentence of fine imposed by the trial Court shall remain unaltered.

Direct Service is permitted.

(C.K. Buch, J)

(Harsha Devani, J)

Aakar